



Department of Energy
Brookhaven Group
Building 464
P.O. Box 5000
Upton, New York 11973

JAN 25 2000

Vicki L. Prouty
Office Of General Law
Chicago Operations Office

**SUBJECT: DESIGNATION AS CONTRACTING OFFICER REPRESENTATIVE FOR
CONTRACT NO. DE-AC02-98CH 10886**

Pursuant to and in accordance with DOE Order 541.1 of 4.30.96, you are hereby appointed Contracting Officer Representative (COR) in connection with litigation matters arising under the subject contract. This appointment is personal to you and may not be delegated to others. This appointment empowers you to communicate directly with the Contractor (informal correspondence is encouraged).

- I. The scope of your appointment is defined to include, without limitation, the following matters:
 - A. Matters relating to Contractor initiation of litigation;
 - B. Matters relating to Contractor defense of litigation;
 - C. Matters relating to Contractor engagement of outside counsel;
 - D. Matters relating to Contractor management of litigation costs;
 - E. Matters relating to Major Fraud Act implementation;
 - F. Matters relating to quarterly reporting of status of outside litigation.
- II. Your duties will consist of the following:
 - A. Direction: As the COR, you shall not impose tasks or requirements upon the Contractor additional to or different from the Scope of Work and Reporting Requirements specified in the contract. To be valid, directions to the Contractor must be issued in writing and must be within the scope of the responsibilities identified above, including but not limited to:
 1. Notifying the Contractor of prior approval requirements, including approval for defense or initiation of litigation, and retention of outside counsel;

2. Cautioning the Contractor that proceeding without approval is at own risk (not reimbursable);
3. Advising the Contractor regarding Major Fraud Act requirements, including prohibition of reimbursement of unallowable proceeding costs;
4. Informing the Contractor of litigation management requirements, including requirement that BSA General Counsel include with quarterly litigation status update report a certification that no government funds have been utilized to pay any costs of outside counsel that have not been approved by DOE.
5. Assisting the contractor to conform its litigation management procedures to contractual requirements and DOE procedures.

B. Surveillance: As the COR, you shall monitor the Contractor's performance to assure that the interests of the Government are adequately protected. In this connection, you should:

1. Review and approve or disapprove Contractor requests relating to litigation (initiation, defense, retention of outside counsel, etc.);
 2. Review and approve changes to the Contractors previously approved litigation management procedures;
 3. Assure Contractor use of subcontracts for outside counsel, in accordance with AL 97-02;
 4. Consider benefit of one outside counsel for multiple contractors;
 5. By close of pleadings, assess each case with the Contractor;
 6. Recommend authorization of mediation or settlement negotiation, or settlements for Contracting Officer approval;
 7. Review and approve the Contractors Staffing and Resource Plan for significant cases, including cases expected to exceed \$100,000;
 8. Review and approve for contractor payment as in accordance with DOE and Contractor Litigation Management Procedures, invoices for Contractors outside counsel services and disbursements;
 9. Inform the Contracting Officer, in writing, of any violations of DOE's or Contractor's Litigation Management Procedures, including costs which are inconsistent with the requirements of A. L. 94-13;
-

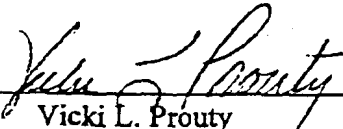
- C. Monitoring: Periodic reviews are necessary to assure that the Contractor has abided by Contractor and DOE procedures and requirements. As COR, you should, review status of BNL litigation and files with BSA counsel at least monthly, to assure:
1. Contract funds are not used to pay invoices of outside counsel unless approved by contractor counsel and COR;
 2. Contract funds are not used to pay proceeding costs that are unallowable under the Major Fraud Act;
 3. Timely submission of accurate quarterly litigation status updates to the Litigation Management Point of Contact for entry in the General Counsel Tracking System.
 4. Contractor compliance with its litigation management procedures and the governing agreements, regulations, and other provisions, are periodically audited.
 5. Outside Counsel adherence to Staffing and Resource Plan;
- D. General: As a matter of practice, you are expected to interface with the Contracting Officer in the following manner:
1. Prepare Memoranda for the Record (MFR) of pertinent meetings, trips, and telephone conversations relating to the contract.
 2. Include a citation to the contract, by number, in each MFR, other similar records, and all correspondence relating to the contract;
 3. Furnish the Contracting Officer (and all other interested parties having a need to know) with a copy of all actions or correspondence.
 4. Accord utmost care to restrictions regarding proprietary data, as well as classified and business-sensitive information.
 5. Report in writing to the contracting Officer all questions relating to litigation management arising out of the contract which cannot be resolved without alteration of the contract scope, or the incurrence of unresolvable differences with the Contractor. Such report should contain the facts and recommendations pertinent to the questions at issue.



Robert P. Gordon
Contracting Officer

cc: A. Handwerker, CH
R. Gordon, BIIG
G. Fess, BNL

ACKNOWLEDGMENT - SIGN ONE COPY AND RETURN



Vicki L. Prouty
Contracting Officer Representative